
Introduction to the *Research Handbook on Territorial Disputes in International Law*

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Globalization, interdependence and integration are contemporary phenomena that are supposed to render territoriality less important than before. A number of human activities and natural phenomena occur without paying any attention to the existence of boundaries. Supranationality in different fields is expanding. The very concept of sovereignty, the key element characterizing states, is put into question. Today's world is witnessing two apparent contradictory trends, at least, as perceived by some observers: the loss of importance of the sovereign state as the principal actor in international relations, and the increase of the number of sovereign states and the attempt at creating new ones in different parts of the globe. After three hundred and seventy years of the Peace of Westphalia that symbolically evokes the emergence of modern sovereign states, this paradox indeed reveals that the state and its material substrate, the territory, still plays a predominant role in the contemporary world.

Spatial divisions have also evolved. New areas have become part of legal regulation. Some of them marked the expansion of states' jurisdiction, whereas others were put outside any attempt at states' appropriation. Among the former divisions are the economic exclusive zone and the continental shelf in the field of the law of the sea. Among the latter is the area of the seabed beyond national jurisdiction and the outer space. Old and new forms of spatial disputes have developed. Some of them, such as the possibility by riparian states to expand a claim of the continental shelf beyond 200 nautical miles, have been canalized through a process involving international organs and procedures.¹ In their strict sense, territorial disputes, such as disputes involving land, have remained a permanent factor of friction among states. They are governed by the general rules of contemporary international law. Two of them are of particular relevance: the prohibition of the use of force and the obligation to settle disputes through peaceful means of free choice between the parties concerned. Whereas some territorial disputes have been settled, others remain without solution in sight, and yet other disputes have emerged. Some of them are dormant, while others constitute a permanent focus of tension and even a threat to international peace and security. Yet a few others are canalized through the existing adjudicative means of settlement of international disputes, such as the International Court of Justice and international arbitration. Indeed, territorial disputes have traditionally been the type of disputes that were the better candidate for their settlement through an impartial body. Actually, the development of modern arbitration largely took place in the field of territorial disputes.

¹ United Nations Convention on the Law of the Sea, art. 76(4)–(7) and Annex II, 10 December 1982, 1833 U.N.T.S. 397.

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Despite the prevalence of territorial disputes in international relations, the international law applicable to the field is hardly codified. The codification and progressive development of the law applicable to territorial disputes was among the first topics that the United Nations International Law Commission (hereinafter the ILC) proposed to the General Assembly in 1946.² However, the project was not taken on, perhaps because of its difficulty. The initial project of the ILC structured the project of codification of territorial disputes around the so-called ‘modes of acquisition of territorial sovereignty’.³ Although practice still reveals references to the doctrine of the modes of acquisition of territorial sovereignty, it is nowadays clear that the so-called ‘modes of acquisition’ do not fully explain the manner in which international law applies to territorial disputes. Beyond titles of territorial sovereignty, that include some of the ‘traditional modes of acquisition’ of territorial sovereignty, other rules, principles and techniques come into play when solving territorial disputes in accordance with international law. In practice, the establishment of territorial sovereignty is also governed by the fundamental principles of international law, such as the prohibition of the use of force, the right of self-determination, the respect for territorial integrity and the obligations to settle international disputes through peaceful means. It also involves the application of technical rules, such as the ‘intertemporal law’ and the ‘critical date’. The majority of these rules, principles and techniques have been fleshed out in international practice, as well as in an ever-increasing list of judicial and arbitral decisions. To these principles, one should add different doctrinal and judicial theories and concepts, which have received different fates from practitioners and states. Whereas some of those concepts are now well established, others have been discarded and a few are still the object of outstanding controversies.

The non-codified character of the international law framework applicable to territorial disputes makes it prone to confusions and incoherent statements, if not outright myths. The object of this Research Handbook is to map the field of territorial disputes around the key elements that structure it. It aims at guiding academics and practitioners and at providing clarity. This overarching goal imposed certain editorial choices. Firstly, it explains the editors’ choice to focus on the fundamental rules, principles and techniques applicable in this domain. As a consequence, the Research Handbook does not focus on topics that are somehow ancillary to territorial disputes, such as those relating to territorial rights other than territorial sovereignty. This is the case of disputes relating to navigational and fishing rights relating to a watercourse boundary, rights of transit, or what is commonly called ‘servitudes’. Disputes relating to territorial regimes could also include agreements establishing free zones and other rights that have a territorial basis, without a closer connection to the question relating to the sovereignty over the disputed territory. Equally, this Research Handbook does not deal

² U.N. Secretary General, *Survey of International Law in Relation to the Work of Codification of the International Law Commission: Preparatory work within the purview of article 18, paragraph 1, of the of the International Law Commission – Memorandum submitted by the Secretary-General*, paras. 64–7, U.N. Doc. A/CN.4/1/Rev (10 February 1949); other attempts for codification include the *American Institute of International Law: Texts of Projects, Projects 10 (National Domain) and 11 (Rights and Duties in Territories in Dispute on the Question of Boundaries)*, 20 Am. J. Int’l. L 318–22 (1926).

³ *Id.*

with disputes relating to maritime areas. Secondly, the choice to focus on the essential common elements of territorial disputes also justifies the decision not to adopt a case study approach and not to engage in the analysis of concrete territorial disputes. The editors prefer to give the readers the fundamental tools of analysis and to leave to them the task to apply them to concrete disputes in which they have a particular interest. Thirdly, the editors gave latitude to the authors of the different chapters to explore in depth their respective chapters from their personal perspectives. They were chosen based on their expertise on the different matters and with the aim to ensure cultural, geographic and gender diversity. The only concern of the editors was to retain coherence in the structure and treatment of the different aspects of the matter, while leaving ample freedom of analysis and theoretical perspectives. Consequently, authors, including the editors, are exclusively responsible for the texts they have produced.

Some questions are discussed in different chapters of this Research Handbook. Even at the risk of being to some extent repetitive, the editors privileged the option of keeping the developments relating to such issues in all chapters concerned. The reason is, on the one hand, to allow the reader to have a variety of perceptions on the same topic and, on the other hand, to keep each chapter as a self-contained text, in case the reader would be interested only in a single particular aspect of territorial conflicts. Nevertheless, Chapter 1 offers a comprehensive picture of the *problématique* dealt with in this Research Handbook. Readers interested only in a specific chapter of the Research Handbook are therefore strongly advised to read it in conjunction with Chapter 1.

The Research Handbook consists of 12 chapters, which are organized according to the logical steps that come into play in territorial disputes. It is therefore divided into three main parts, which are preceded by a preliminary chapter (*Chapter 1*). The preliminary chapter provides an overview of the international law regime applicable to territorial disputes and gives the editors the possibility to discuss some views expressed in the different chapters.

Part I covers *Chapters 2 to 6* and deals with the establishment of territorial sovereignty. *Chapters 2 and 3*, which are authored by Mamadou Hébié, discuss the international law framework applicable to the acquisition of territorial sovereignty during the period of colonial expansion, which covered most of the regions of the world. Whereas *Chapter 2* deals with original titles of territorial sovereignty, *Chapter 3* examines the acquisition of derivative titles of territorial sovereignty by colonial powers.

Chapter 4, which is authored by Marcelo G. Kohen, discusses the relationship between titles and *effectivités* and explains the content of both crucial terms present in territorial disputes.

Chapter 5 is written by Kate Parlett and focuses on the relevance of state conduct in territorial disputes. Such conduct may help create, prove or extinguish a title of territorial sovereignty.

Giuseppe Nesi's *Chapter 6* addresses the specific issues pertaining to international boundaries.

Part II contains *Chapters 7 to 10*. This part of the Research Handbook analyses the impact of fundamental principles of international law on titles of territorial sovereignty.

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Chapter 7, authored by Pierre Klein and Vaios Koutroulis, analyses the international law framework governing the use of force on the acquisition of territorial sovereignty through time.

Chapter 8, which is authored by Seokwoo Lee, continues the question of the relations between the use of force and territorial disputes, focusing on the question of peace treaties.

Chapter 9, written by Mariano J. Aznar, deals with the role of the principle of self-determination on territorial disputes. For the sake of completeness, this chapter broadens the legal issue at stake and investigates the impact of the human factor in general on territorial disputes. Self-determination is only one means through which certain human considerations can be taken into account in the settlement of territorial disputes.

Chapter 10, whose authors are Theodore Christakis and Aristoteles Constantinides, addresses the issues relating to territorial conflicts in the context of secessionist claims.

Part III deals with some technical issues that routinely arise in territorial disputes. They generally relate to the role of the time factor and evidence in territorial disputes.

Chapter 11, whose author is Giovanni Distefano, examines the two main technical rules, that is to say the critical date and the intertemporal law, that are used to address the temporal problems.

Chapter 12, authored by Katherine Del Mar, addresses the issues relating to evidentiary matters in territorial disputes.

The Research Handbook ends with a conclusion where the editors express their views on the cornerstones of the international law framework applicable to territorial disputes. The editors explain why they remain convinced that international law is the most appropriate framework to deal with them.*

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